

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

WESTMORELAND COAL COMPANY, *et al.*,¹
Debtors.

Chapter 11

Case No.: 18-35672 (DRJ)

(Jointly Administered)

**WLB LIQUIDATING TRUST'S TWENTY-NINTH OMNIBUS OBJECTION TO
CERTAIN SATISFIED CLAIMS**

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED WITHOUT A HEARING.

A HEARING HAS BEEN SET ON THIS MATTER ON OCTOBER 21, 2019 AT 9:00 A.M. PREVAILING CENTRAL TIME, IN COURTROOM 400, 4TH FLOOR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK STREET, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE CERTAIN PROOFS OF CLAIM. CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS ON EXHIBIT A TO THE ORDER FILED WITH THIS OBJECTION.

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company's service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

Cullen D. Speckhart, the claims administrator (“Claims Administrator”) of the WLB Liquidating Trust (as defined herein), created pursuant to the WLB Debtors’ confirmed *Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (the “WLB Plan”) in these jointly administered bankruptcy cases (the “Cases”), by her undersigned counsel and on behalf of the WLB Liquidating Trust, files this omnibus objection (the “Objection”) and seeks entry of an order, substantially in the form attached hereto as **Exhibit 2** (the “Order”), disallowing and modifying certain claims identified on the exhibits attached to the Order.² In support of the Objection to these certain objected to proofs of claim (each, an “Objected Claim,” and collectively, the “Objected Claims”), the Claims Administrator submits the *Declaration of Robert P. Esposito in Support of the WLB Liquidating Trust’s Twenty-Ninth Omnibus Objection to Certain Satisfied Claims* attached hereto as **Exhibit 1** (the “Esposito Declaration”) and respectfully states as follows:

RELIEF REQUESTED

1. By this Objection, the WLB Liquidating Trust seeks entry of the proposed order (the “Order”), substantially in the form of the Order filed with this Objection, pursuant to § 502(b) of the Bankruptcy Code, Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Objection Procedures (as defined herein):

- (a) disallowing and expunging the claims identified on **Exhibit A** to the Order (the “Satisfied Claims”) in their entirety because the claims were satisfied or released during or prior to these chapter 11 cases in accordance with the Bankruptcy Code, any applicable rules, or a Court order.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WLB Plan.

Jurisdiction, Venue, and Procedural Background

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The WLB Liquidating Trust confirms its consent, pursuant to Rule 7008 of the Bankruptcy Rules, to the entry of a final order by the Court in connection with this Objection to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The basis for the relief requested herein are §§ 105(a) and 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 3007, and Rules 9013-1 and 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

5. On October 9, 2018 (the “Petition Date”), the WLB Debtors³ and the WMLP Debtors⁴ (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [ECF No. 71].

6. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. On October 18, 2018, the United States Trustee for the Southern District of

³ “WLB Debtors” means all Debtors except for Westmoreland Resources GP, LLC, Westmoreland Resource Partners, LP (“WMLP”), and WMLP’s subsidiaries (collectively with WMLP, the “WMLP Debtors”).

⁴ Specifically, the WMLP Debtors are: (a) WMLP; (b) Westmoreland Kemmerer, LLC; (c) Oxford Mining Company, LLC; (d) Harrison Resources, LLC; (e) Oxford Mining Company-Kentucky, LLC; (f) Daron Coal Company, LLC; (g) Oxford Conesville, LLC; and (h) Westmoreland Kemmerer Fee Coal Holdings, LLC.

Texas (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to § 1102 of the Bankruptcy Code (the “Committee”) [ECF No. 206].

7. On March 2, 2019, the Bankruptcy Court entered the *Order Confirming the Amended Joint Chapter 11 Plan of Westmoreland Coal Company and Certain of Its Debtor Affiliates* (the “Confirmation Order”) [ECF No. 1561] confirming the WLB Plan.

8. On March 15, 2019, the effective date of the WLB Plan (the “Effective Date”) [ECF No. 1608], the WLB Debtors executed the Liquidating Trust Agreement (the “WLB Liquidating Trust Agreement”), creating a liquidating trust (the “WLB Liquidating Trust”) for the primary purpose of liquidating and distributing the WLB Liquidating Trust’s assets for the benefit of holders of allowed claims. The WLB Liquidating Trust Agreement appointed Jeffrey S. Stein as trustee for the WLB Liquidating Trust (the “Plan Administrator”) and Cullen D. Speckhart as the Claims Administrator. As of the Effective Date, the Claims Administrator, on behalf of the WLB Liquidating Trust, has the authority to object to or otherwise resolve General Unsecured Claims filed against the WLB Debtors. *See* WLB Plan, Art. VI.B.1 [ECF No. 1561].

The Claims Reconciliation Process

9. On November 9, 2018, the Debtors filed their Statements of Financial Affairs and Schedules of Assets and Liabilities, as required by § 521 of the Bankruptcy Code (collectively, the “Schedules”) pursuant to Bankruptcy Rule 1007 and the *Order Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs* [ECF No. 82].

10. On November 15, 2018, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and*

Manner for Filing Proofs of Claim, Including Section 503(B)(9) Requests, and (IV) Approving Notice of Bar Dates [ECF No. 524] (the “Bar Date Order”), establishing certain dates and deadlines for filing proofs of claims in these chapter 11 cases (collectively, the “Proofs of Claims”). Among other things, the Bar Date Order established: (a) December 12, 2018 at 5:00 p.m. prevailing Central Time, as the deadline for all non-governmental entities holding or wishing to assert a “claim” (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing and (b) April 8, 2019, at 5:00 p.m. prevailing Central Time, as the deadline for all governmental entities holding or wishing to assert a “claim” (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing.

11. To date, over 1,386 proofs of claims have been filed against the Debtors, totaling over \$2.777 billion in the aggregate for liquidated amounts. Because of the large number of claims in these cases, the Debtors sought and have been granted approval to file omnibus objections to certain claims in accordance with the procedures set forth in the *Order Approving Omnibus Claims Objection Procedures and Filing of Substantive Omnibus Claims Objections* [ECF No. 1546] (the “Objection Procedures”). The WLB Liquidating Trust, through the Claims Administrator and her advisors (collectively, the “Reviewing Parties”), have been working diligently to review the Objected Claims, including any supporting documentation filed therewith. For the reasons set forth below, and based on the review to date, the Reviewing Parties have determined that the Satisfied Claims should be disallowed and expunged, as set forth herein.

OBJECTION

12. Section 502 of the Bankruptcy Code provides, in pertinent part, as follows: “[a] claim or interest, proof of which is filed under § 501 of [the Bankruptcy Code], is deemed allowed,

unless a party in interest . . . objects.” 11 U.S.C. § 502. Section 502(b)(1) provides that a court shall not allow a claim if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.” See 11 U.S.C. § 502(b)(1). Moreover, Bankruptcy Rule 3007 provides certain grounds upon which “objections to more than one claim may be joined in an omnibus objection,” which includes when “the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because . . . they have been amended by subsequently filed proofs of claim,” “they were not timely filed,” “they have been filed in the wrong case,” or “they have been satisfied or released during the case in accordance with the [Bankruptcy] Code, applicable rules, or a court order.” Fed. R. Bankr. P. 3007(d). Additionally, pursuant to the Objection Procedures, the Debtors are permitted to file objections to more than one claim on the basis that, among other things, such claims were incorrectly classified. See Objection Procedures, Ex. 1, ¶ 1(d).

13. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes prima facie evidence of the validity and the amount of the claim under § 502(a) of the Bankruptcy Code. See, e.g., *In re Tran*, 351 B.R. 440, 444 (Bankr. S.D. Tex. 2006), aff’d, 369 B.R. 312 (S.D. Tex. 2007) (holding that a properly filed proof of claim is prima facie evidence of the validity and amount of the claim.) A proof of claim loses the presumption of prima facie validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim’s legal sufficiency. See *In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988) (holding “If, however, evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to prove the validity of the claim by a preponderance of the evidence.”) Once such an allegation is refuted, the burden reverts to the

claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Despite this shifting burden during the claim objection process, “the ultimate burden of proof always lies with the claimant.” *Id.*

A. Satisfied Claims

14. As set forth in the Esposito Declaration, the Reviewing Parties have reviewed the Debtors’ books and records and the claims register and have determined that the Satisfied Claims identified on **Exhibit A** were satisfied or released during or prior to these chapter 11 cases in accordance with the Bankruptcy Code, any applicable rules, or a Court order. Failure to disallow and expunge such Satisfied Claim could result in the relevant claimants receiving an unwarranted recovery against the Debtors to the detriment of other similarly situated creditors. Elimination of the Satisfied Claims will enable the maintenance of a more accurate claims register and will not prejudice the claimant. Accordingly, the Claims Administrator requests that the Court enter the Order disallowing and expunging the Satisfied Claim identified on **Exhibit A** to the Order.

RESERVATION OF RIGHTS

15. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of the WLB Liquidating Trust to object to any claim on any ground whatsoever. The Claims Administrator, on behalf of the WLB Liquidating Trust, expressly reserves all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the WLB Liquidating Trust’s right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection;

(e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to § 365 of the Bankruptcy Code; or (f) a waiver of the WLB Liquidating Trust's rights under the Bankruptcy Code or any other applicable law.

SEPARATE CONTESTED MATTER

16. To the extent that a response is filed regarding any Objected Claim and the WLB Liquidating Trust is unable to resolve any such response, each such Objected Claim, and the Objection as it pertains to such Objected Claim, will constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Further, the Claims Administrator, on behalf of the WLB Liquidating Trust, requests that any order entered by the Court regarding an objection or other reply asserted in response to this Objection be deemed a separate order with respect to each proof of claim.

NOTICE

17. Notice of the hearing on the relief requested in this Objection has been provided by the WLB Liquidating Trust in accordance and compliance with Bankruptcy Rules, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the forgoing, due notice was afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties in interest, including (collectively, the "Notice Parties"): (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Committee; (c) the indenture trustee under the WLB Debtors' 8.75% senior secured notes due 2022; (d) the ad hoc group of lenders under the WLB Debtors' prepetition term loan facility due 2020 and the WLB Debtors' 8.75% senior secured notes due 2022; (e) the administrative agent under the WLB Debtors' prepetition term loan facility due 2020; (f) the administrative agent under the WMLP Debtors' term loan facility due 2018; (g) the ad hoc committee of certain lenders under the WMLP Debtors' term loan facility due 2018;

(h) the administrative agent under the WLB Debtors' debtor-in-possession financing facility; (i) the lenders under the WLB Debtors' debtor-in-possession financing facility; (j) counsel to the Conflicts Committee of the Board of Directors of Westmoreland Resources GP, LLC; (k) the United States Attorney's Office for the Southern District of Texas; (l) the Internal Revenue Service; (m) the United States Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (n) the offices of the attorneys general for the states in which the Debtors operate; (o) the United States Securities and Exchange Commission; (p) the Pension Benefit Guaranty Corporation; (q) holders of the Objected Claims; and (r) any party that has requested notice pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Claims Administrator, on behalf of the WLB Liquidating Trust, respectfully requests that the Court enter an Order granting the relief requested herein, and such other and further relief as is just and equitable.

September 6, 2019

Respectfully submitted,

/s/ Cullen D. Speckhart

Cullen D. Speckhart

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Certificate of Service

I certify that on the 6th day of September 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Cullen D. Speckhart _____

Cullen D. Speckhart